

**FEB 1 1979**

MICHAEL RODAR, JR., CLERK

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

—•—  
No. 78-1051  
—•—

UNITED STATES OF AMERICA,  
PETITIONER,

vs.

SALVATORE FINAZZO and DOMINIC J. LICAVOLI,  
RESPONDENTS.

—•—  
**BRIEF FOR RESPONDENT  
DOMINIC J. LICAVOLI IN OPPOSITION  
TO GOVERNMENT'S PETITION FOR  
WRIT OF CERTIORARI**  
—•—

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**COUNTER-STATEMENT OF THE  
ISSUE PRESENTED FOR REVIEW**

1) WHETHER FORCIBLE AND SURREPTITIOUS PHYSICAL  
INVASION OF BUSINESS PREMISES BY FEDERAL AGENTS  
FOR THE PURPOSE OF INSTALLING, REPAIR, MAINTENANCE  
OR REMOVAL OF ELECTRONIC EAVESDROPPING  
DEVICES IS, ABSENT A VALID CONSENT OR SPECIFIC  
JUDICIAL AUTHORIZATION, A VIOLATION OF THE  
FOURTH AMENDMENT.

### ARGUMENT

During the government's oral argument before the Sixth Circuit, Assistant United States Attorney, John Newcomer, indicated on the record that it is now the policy of the Department of Justice to seek specific judicial authorization before entering premises for the purpose of installing electronic eavesdropping devices. While Respondent does not concede that federal judges have this power, if the current policy is to seek prior authorization, the facts presented by this case should not arise again. Further, the change in government policy is a way of acknowledging that the procedure followed here was improper.

Because the situation is unlikely to recur, the Court would be dealing with something of purely historical significance. If the Supreme Court does choose to rule on the issue of forcible surreptitious entry to install electronic eavesdropping devices, it should rule on current practices of the Justice Department. To do otherwise would be to minimize the applicability and significance of the decision.

### CONCLUSION

The District Court and the Sixth Circuit Court of Appeals came to the correct result in this case. This Court should deny the Government's Petition for Writ of Certiorari.

Respectfully submitted,  
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Dated: January 31, 1979